

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Vagish, LLC, doing business as Cambridge
Plaza Hotel, and Va Va Vagish, LLC, doing
business as Legends Lounge,

Plaintiffs,

vs.

Seneca Specialty Insurance Company,

Defendant.

C/A No.: 3:13-cv-03161-TLW

**Plaintiffs’ memorandum of law in response to
Defendant’s motion *in limine* regarding non-prosecution for arson**

Defendant Seneca Specialty Insurance Company (Seneca) moved the Court *in limine* for an order “preventing Plaintiffs, their witnesses, and their counsel from making any reference, presenting evidence, or adducing any testimony relating to the non-prosecution of Kislaya Sinha or Plaintiffs’ other representatives for criminal arson.” Dkt. No. 123 at 2. Plaintiffs Vagish, LLC, doing business as Cambridge Plaza Hotel, and Va Va Vagish, LLC, doing business as Legends Lounge (collectively, “Vagish”) *agrees* that such a limitation is appropriate *provided that* the Court orders other limitations on evidence and argument. Vagish’s agreement here is contingent upon two additional limitations.

First, Vagish has moved the Court *in limine* to exclude all mention of any arson investigation by SLED and/or exclude evidence of any polygraph from trial. See Dkt. No. 121. Notably, both Vagish’s motion and this one rely on Rabon v. Great Southwest Fire Insurance Co., 818 F.2d 306 (1987). In Rabon, an insured claimed a bad faith denial of a claim and the insurer pled the affirmative defense of arson. Id. at 307. After a jury verdict in the insured’s

favor, the insurance company appealed arguing, in relevant part, it was entitled to a new trial because of improper jury argument and misleading instruction concerning the presumption of innocence. Id. at 308. Specifically, the insured's counsel argued "law enforcement investigated this matter, they dismissed the charges[,] and that after the dismissal of those charges, the insurance company sought to find him "guilty" of arson. Id. at 308. The Fourth Circuit held it was reversible error to admit evidence of nonprosecution or acquittal on related criminal arson charges because such evidence goes to the principle issue for the jury, and a criminal prosecutor or criminal jury apply a different standard in reaching a decision. Id. at 309; see also Brown v. Allstate Ins. Co., 542 S.E.2d 723, 725 (S.C. 2001) (same). "Of course, as a matter of consistency and fairness, the insurer may not admit evidence that criminal arson charges have been brought against the insured." Kelly's Auto Parts, No. 1, Inc. v. Boughton, 809 F.2d 1247, 1253 (6th Cir. 1987)). Accordingly, Vagish agrees with the limitation on evidence and argument proposed by Seneca provided the Court also grants Plaintiffs' motion (Dkt. No. 121). To do otherwise would allow Seneca to prejudice the jury against Vagish and Mr. Sinha with evidence of SLED's investigation while leaving Vagish unable to respond.

Second, the Court should impose a reciprocal limitation on Seneca by preventing Seneca's witnesses and counsel from making any reference, presenting any evidence, or adducing any testimony relating to the prosecution or non-prosecution of Kislaya Sinha or Plaintiffs' other representatives for criminal arson.

Subject to these conditions, Seneca's motion should be granted. Otherwise, Vagish objects and the motion should be denied.

[signature page follows]

Respectfully submitted by,

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September 8, 2016

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